

Introduced by Senator Escutia

January 25, 2006

An act to amend Sections 39674, 42400, and 42402 of, and to add Section 42407.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as introduced, Escutia. Air pollution: Children's Breathing Rights Act: penalties.

(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources.

This bill would create the Children's Breathing Rights Act which would increase the civil penalties for specified violations of air pollution laws from nonvehicular sources from \$1,000 to \$10,000. The bill would eliminate certain affirmative defenses and civil liability provisions relating to violations of air quality laws, as provided. The bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious and chronic violator of nonvehicular air pollution laws. The bill would require the State Air Resources Board, by March 1, 2007, to define, by regulation, the term "serious and chronic violator." The bill would require that all moneys collected from serious and chronic violators pursuant to those provisions be deposited into the Children's Breathing Rights Fund, which would be created by the bill, to be used, upon appropriation, for specified purposes.

Because this bill would add new crimes by, among other things, eliminating certain affirmative defenses to certain crimes, this bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 Children's Breathing Rights Act.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) Breathing clean and healthy air is a right of all Californians,
6 especially our children, whose health suffers disproportionately
7 when our air is polluted.

8 (2) Reduced lung growth and function, new asthma cases,
9 respiratory complications for asthmatics, and increased school
10 absences from respiratory illnesses are just some of the
11 consequences our children face if we fail to protect that right.

12 (3) The most recent available state and federal data reveal that
13 more than 245 million pounds of industrial air pollution were
14 emitted near California schools in 1995. Statewide, more than 2.8
15 million children were enrolled in schools located near reported air
16 emissions of carcinogens, reproductive toxins, heavy metals,
17 nitrogen oxides, sulfur dioxide, or particulate matter.

18 (4) If we improve the enforcement of our air quality laws and
19 ensure that penalties are not so low as to be a minor inconvenience
20 to a serious and chronic air polluter, our children's right to clean
21 and healthy air can be better protected.

22 (b) It is the intent of the Legislature to increase penalties for
23 serious and chronic violators of air pollution laws and to use those
24 enhanced penalties to improve air pollution enforcement activities,
25 to help fund local children's health initiatives, and to help fund
26 asthma prevention activities in schools and local communities.

SEC. 3. Section 39674 of the Health and Safety Code is amended to read:

39674. (a) ~~Except as otherwise provided in subdivision (b);~~
~~any~~ Any person who violates any rule or regulation, emission
 limitation, ~~or~~ permit condition, *order, fee requirement, filing*
requirement, duty to allow or carry out inspection or monitoring
activities, or duty to allow entry for which delegation or approval
of implementation and enforcement authority has been obtained
pursuant to subdivision (l) of Section 112 of the Clean Air Act (42
U.S.C. Section 7412(l)) or the regulations adopted pursuant
thereto, adopted pursuant to Section 39659 or Article 4
 (commencing with Section 39665) or which is implemented and
 enforced as authorized by subdivision (b) of Section 39658 is
 strictly liable for a civil penalty not to exceed ~~one ten~~ thousand
 dollars ~~(\$1,000)~~ (\$10,000) for each day in which the violation
 occurs.

(b) (1) ~~Any person who violates any rule or regulation, emission~~
~~limitation, permit condition, order fee requirement, filing~~
~~requirement, duty to allow or carry out inspection or monitoring~~
~~activities, or duty to allow entry for which delegation or approval~~
~~of implementation and enforcement authority has been obtained~~
~~pursuant to subdivision (l) of Section 112 of the Clean Air Act (42~~
~~U.S.C. Section 7412(l)) or the regulations adopted pursuant thereto,~~
~~adopted pursuant to Section 39659 or Article 4 (commencing with~~
~~Section 39665) or which is implemented and enforced as authorized~~
~~by subdivision (b) of Section 39658 is strictly liable for a civil~~
~~penalty not to exceed ten thousand dollars (\$10,000) for each day~~
~~in which the violation occurs.~~

(2) ~~Where a civil penalty in excess of one thousand dollars~~
~~(\$1,000) for each day of violation is sought, there is no liability~~
~~under paragraph (1) if the person accused of the violation alleges~~
~~by affirmative defense and establishes that the violation is caused~~
~~by an act which was not the result of intentional or negligent~~
~~conduct. In a district in which a Title V permit program has been~~
~~fully approved, this paragraph shall not apply to a violation of~~
~~federally enforceable requirements that occur at a Title V source.~~

(3) ~~Paragraph (2) shall not apply to a violation of a toxic air~~
~~contaminant rule, regulation, permit, order, fee requirement, filing~~
~~requirement, duty to allow or carry out inspection or monitoring~~
~~activities, or duty to allow entry for which delegation or approval~~

~~of implementation and enforcement authority has been obtained pursuant to subdivision (f) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(f)), or the regulations adopted pursuant thereto.~~

SEC. 4. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than ~~one~~ *ten* thousand dollars ~~(\$1,000)~~ (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 ~~that causes actual injury, as defined in subdivision (d), to the health or safety of a considerable number of persons or the public~~ is guilty of a misdemeanor and is subject to a fine of not more than fifteen thousand dollars (\$15,000) or imprisonment in the county jail for not more than nine months, or both.

(d) ~~As used in this section, “actual injury” means any physical injury that, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.~~

~~(e) Each day during any portion of which a violation of subdivision (a) or (c) occurs is a separate offense.~~

SEC. 5. Section 42402 of the Health and Safety Code is amended to read:

1 42402. (a) Except as provided in Sections 42402.1, 42402.2,
2 42402.3, and 42402.4, any person who violates this part, any order
3 issued pursuant to Section 42316, or any rule, regulation, permit,
4 or order of a district, including a district hearing board, or of the
5 state board issued pursuant to Part 1 (commencing with Section
6 39000) to Part 4 (commencing with Section 41500), inclusive, is
7 strictly liable for a civil penalty of not more than ~~one~~ *ten* thousand
8 dollars ~~(\$1,000)~~ *(\$10,000)*.

9 (b) ~~(1) Any person who violates any provision of this part, any~~
10 ~~order issued pursuant to Section 42316, or any rule, regulation,~~
11 ~~permit or order of a district, including a district hearing board, or~~
12 ~~of the state board issued pursuant to Part 1 (commencing with~~
13 ~~Section 39000) to Part 4 (commencing with Section 41500);~~
14 ~~inclusive, is strictly liable for a civil penalty of not more than ten~~
15 ~~thousand dollars (\$10,000).~~

16 (2) (A) ~~If a civil penalty in excess of one thousand dollars~~
17 ~~(\$1,000) for each day in which a violation occurs is sought, there~~
18 ~~is no liability under this subdivision if the person accused of the~~
19 ~~violation alleges by affirmative defense and establishes that the~~
20 ~~violation was caused by an act that was not the result of intentional~~
21 ~~nor negligent conduct.~~

22 (B) ~~Subparagraph (A) shall not apply to a violation of federally~~
23 ~~enforceable requirements that occur at a Title V source in a district~~
24 ~~in which a Title V permit program has been fully approved.~~

25 (C) ~~Subparagraph (A) does not apply to a person who is~~
26 ~~determined to have violated an annual facility emissions cap~~
27 ~~established pursuant to a market based incentive program adopted~~
28 ~~by a district pursuant to subdivision (b) of Section 39616.~~

29 (e) ~~Any person who owns or operates any source of air~~
30 ~~contaminants in violation of Section 41700 that causes actual~~
31 ~~injury, as defined in subdivision (d) of Section 42400, to the health~~
32 ~~and safety of a considerable number of persons or the public, is~~
33 ~~liable for a civil penalty of not more than fifteen thousand dollars~~
34 ~~(\$15,000).~~

35 (d) ~~—~~

36 (c) Each day during any portion of which a violation occurs is
37 a separate offense.

38 SEC. 6. Section 42409.5 is added to the Health and Safety
39 Code, to read:

1 42409.5. (a) On and after June 1, 2007, any serious and chronic
2 violator shall be liable for a civil penalty of not more than one
3 hundred thousand dollars (\$100,000) per day for each violation
4 described by this article, in addition to any other penalty prescribed
5 by this article.

6 (b) On or before March 1, 2007, the state board shall adopt, by
7 regulation, a definition of the term “serious and chronic violator”
8 for the purposes of this section. In determining the definition of a
9 serious and chronic violator, the state board shall consider all of
10 the following:

- 11 (1) The magnitude of the violation.
- 12 (2) The scope of the violation.
- 13 (3) The severity of the violation.
- 14 (4) The degree to which a violation jeopardizes the environment
15 or human health, safety, or welfare.
- 16 (5) The degree to which a violation contributes to the failure to
17 accomplish goals or program objectives set by the state board.
- 18 (6) The degree to which a violation makes it difficult to
19 determine if the violator is in compliance with other air quality
20 laws, rules, or regulations.

21 (c) All moneys collected from any serious and chronic pursuant
22 to this section violator shall be deposited into the Children’s
23 Breathing Rights Fund, which is hereby created in the State
24 Treasury. Moneys in the fund shall be available, upon appropriation
25 by the Legislature, for the following purposes:

- 26 (1) Twenty-five percent shall be allocated to the district where
27 the penalty was assessed for enhanced enforcement activities in
28 the district within close proximity to where those violations
29 occurred, including monitoring, the development of pollution
30 control technology, and providing assistance to serious and chronic
31 air polluters.
- 32 (2) Fifty percent shall be allocated to local children’s health
33 initiatives in the district where the penalty was assessed to ensure
34 basic health coverage, including asthma services in schools and
35 communities. If there is no local children’s health initiative in the
36 district where the penalty was assessed, the allocation shall be
37 made to the California Healthy Kids Insurance Program,
38 established by Senate Bill 437 of the 2005–2006 Regular Session
39 of the Legislature.

1 (3) Twenty-five percent shall be allocated to the state board for
2 enforcement of this article, including monitoring, the development
3 of pollution control technology, providing assistance to serious
4 and chronic air polluters, and auditing enforcement activities by
5 districts.

6 (c) On or before January 1, 2008, and annually thereafter, the
7 state board shall submit a report to the Legislature summarizing
8 the enforcement of this article, including auditing by the state board
9 of enforcement activities by district.

10 SEC. 7. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.